

REMARKS

Claims 1-25 are pending in the present application. Applicants respectfully traverse the Examiner's rejections of claims 1-25 in view of the remarks set forth below.

In the Office Action, claims 1-8, 10-16 and 18-24 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Number 6,782,260 to Nakakita et al. (hereinafter *Nakakita*) patent. The Applicant respectfully disagrees with the rejection of claims 1-8, 10-16 and 18-24 under the § 102(e) over the *Nakakita* patent because the *Nakakita* patent is not prior art to the present application under § 102(e). It is respectfully submitted that the Examiner has incorrectly identified the effective date of the *Nakakita* patent, *i.e.*, the § 102(e) date. Reconsideration of this rejection of claims 1-8, 10-16 and 18-24 is respectfully requested.

As with any prior art rejection, a rejection based on 35 U. S. C. § 102(e) or a reference that is cited as § 102(e) prior art requires an analysis of issues relating to filing dates and priority date to evaluate these rejections. A rejection under 35 U.S.C. § 102(e) over a reference that qualifies under 35 U.S.C. § 102(e), requires that the claimed invention be described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the Applicant.

Considering the facts of instant situation, the priority document for *Nakakita* patent foreign application P2000-351066(JP), was filed on November 17, 2000 in Japan. The United States application (Serial No. 09/987,880) (the "*Nakakita* application"), was filed in the United States on November 16, 2001. The *Nakakita* application claimed priority from the foreign

application P2000-351066(JP) based upon its denoted filing date in “Foreign Application Priority Data.”

In this situation, a § 102(e) date for the *Nakakita* patent is November 16, 2001 -- the date the Nakakita application was filed with the United States Patent Office, the U. S. filing date. Thus, the *Nakakita* patent has a later effective filing date than the instant application. It is believed that the Examiner incorrectly believed that the §102(e) of the *Nakakita* patent equated with the filing date of the Japanese priority document. Therefore, the *Nakakita* patent is not prior art to the present application under § 102(e). Applicants respectfully submit that the *Nakakita* patent is removed as the 35 U.S.C. § 102(e) prior art.

Specifically, the U. S. Patent 6, 782, 260 (“the *Nakakita* patent”), claiming priority from a foreign application (not an international application) filed prior to November 29, 2000 has a 35 U.S.C. § 102(e) date that is after the effective filing date of the instant application being examined. If the international application has an international filing date prior to November 29, 2000, a reference is to be applied under the provisions of 35 U.S.C. § 102 and 374, prior to the AIPA amendments. For U.S. application publications of applications that claim the benefit under 35 U.S.C. § 120 or 365(c) of an international application filed prior to November 29, 2000, the reference is to be applied under 35 U.S.C. § 102(e) as of the actual filing date of the later-filed U.S. application that claimed the benefit of the international application. In fact, foreign applications’ filing dates that are claimed (via 35 U.S.C. § 119(a)-(d), (f), or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. § 102(e) dates for prior art purposes. Therefore,

Applicant submits that the *Nakakita* patent relied upon by the Examiner is not available as prior art under 35 U.S.C. § 102(e) against the present invention.

In this manner, Applicants respectfully submit that the above set forth reasons provide evidence that the effective filing date of the present application is prior to the effective filing date of the *Nakakita* patent (so it is not "prior art" under 35 U.S.C. § 102(e)). Thus, it is submitted that the foregoing evidence is sufficient to remove the *Nakakita* patent as the 35 U.S.C. § 102(e) prior art.

For at least the aforementioned reasons, Applicants' respectfully submit that the present invention is not anticipated by *Nakakita* and request that the Examiner's rejections of claims 1-8, 10-16 and 18-24 under 35 U.S.C. § 102(e) be withdrawn.

Claims 9 and 25 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Nakakita* in view of *Lambert* (U.S. Patent No. 5,642,380). Additionally, claim 17 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Nakakita* in view of *Newton's* Telecom Dictionary. Applicants' respectfully traverse the Examiner's rejections of claims 9, 17 and 25 because *Nakakita* is not prior art to the present application under §102(e).

Accordingly, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4089 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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